

COMMITTEE SUBSTITUTE

for

H. B. 2823

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(Originating in the Committee on Finance)
[February 25, 2015]

A BILL to amend and reenact §11-13-2d of the Code of West Virginia, 1931, as amended, relating to eliminating a certain tax on persons engaging or continuing within this state in the service or business of street and interurban and electric railways.

Be it enacted by the Legislature of West Virginia:

That §11-13-2d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2d. Public service or utility business.

1 (a) Upon any person engaging or continuing within this state
2 in any public service or utility business, except railroad, railroad
3 car, express, pipeline, telephone and telegraph companies, water
4 carriers by steamboat or steamship and motor carriers, the tax
5 imposed by section two of this article shall be equal to the gross
6 income of the business derived from such activity or activities
7 multiplied by the respective rates as follows:

8 (1) Street and interurban and electric railways, one and
9 four-tenths percent;

10 (2) Water companies, four and four-tenths percent, except as
11 to income received by municipally owned water plants;

12 (3) Electric light and power companies, four percent on sales
13 and demand charges for domestic purposes and commercial
14 lighting and four percent on sales and demand charges for all
15 other purposes, and except as to income received by municipally
16 owned plants producing or purchasing electricity and distributing
17 same: *Provided*, That electric light and power companies which
18 engage in the supplying of public service but which do not

19 generate or produce in this state the electric power they supply
20 shall be taxed on the gross income derived from sales of power
21 which they do not generate in this state at the rate of three
22 percent on sales and demand charges for domestic purposes and
23 commercial lighting and three percent on sales and demand
24 charges for all other purposes, except as to income received by
25 municipally owned plants: *Provided, however,* That the sale of
26 electric power under this section shall be taxed at the rate of two
27 percent on that portion of the gross proceeds derived from the
28 sale of electric power to a plant location of a customer engaged
29 in a manufacturing activity, if the contract demand at such plant
30 location exceeds two hundred thousand kilowatts per hour per
31 year, or if the usage of such plant location exceeds two hundred
32 thousand kilowatts per hour in a year: *Provided further,* That the
33 sale of electric power under this section shall be exempt from the
34 tax imposed by this section and section two of this article if it is
35 separately metered and consumed in an electrolytic process for
36 the manufacture of chlorine in this state, or is separately metered
37 and consumed in the manufacture of ferroalloy in this state, and
38 the rate reduction herein provided to the taxpayer shall be passed

39 on to the manufacturer of the chlorine or ferroalloy. As used in
40 this section, the term “ferroalloy” means any of various alloys of
41 iron and one or more other elements used as a raw material in the
42 production of steel: *And provided further*, That the term does not
43 include the final production of steel;

44 (4) Natural gas companies, four and twenty-nine hundredths
45 percent on the gross income: *Provided*, That the sale of natural
46 gas under this section shall be exempt from the tax imposed by
47 this section and section two of this article to the extent that the
48 natural gas is separately metered and is gas from which the
49 purchaser derives hydrogen and carbon monoxide for use in the
50 manufacture of chemicals in this state, and the full economic
51 benefit of the exception herein provided to the taxpayer shall be
52 passed on to such purchaser of the natural gas: *Provided*,
53 *however*, That there shall be no exemption for the sale of any
54 natural gas from which the purchaser derives carbon monoxide
55 or hydrogen for the purpose of resale;

56 (5) Toll bridge companies, four and twenty-nine hundredths
57 percent; and

58 (6) Upon all other public service or utility business, two and
59 eighty-six hundredths percent.

60 (b) The measure of this tax shall not include gross income
61 derived from commerce between this state and other states of the
62 United States or between this state and foreign countries. The
63 measure of the tax under this section shall include only gross
64 income received from the supplying of public service. The gross
65 income of the taxpayer from any other activity shall be included
66 in the measure of the tax imposed upon such other activity by the
67 appropriate section or sections of this article.

68 (c) Beginning March 1, 1989, electric light and power
69 companies shall determine their liability for payment of tax
70 under this section and sections two-m and two-n of this article.
71 If for taxable months beginning on or after March 1, 1989,
72 liability for tax under section two-n of this article is equal to or
73 greater than the sum of the power company's liability for
74 payment of tax under subdivision (3), subsection (a) of this
75 section and section two-m of this article, then the company shall
76 pay the tax due under section two-n of this article and not the tax
77 due under subdivision (3), subsection (a) of this section and

78 section two-m of this article. If tax liability under section two-n
79 is less, then tax shall be paid under subdivision (3), subsection
80 (a) of this section and section two-m of this article and the tax
81 due under section two-n shall not be paid. The provisions of
82 subdivision (3), subsection (a) of this section shall expire and
83 become null and void for taxable years beginning on or after
84 January 1, 1998.

85 (d) Notwithstanding the provisions of subsection (c) of this
86 section, beginning June 1, 1995, electric light and power
87 companies that actually paid tax based on the provisions of
88 subdivision (3), subsection (a) of this section or section two-m
89 of this article for every taxable month in 1994 shall determine
90 their liability for payment of tax under this article in accordance
91 with subdivision (1) of this subsection. All other electric light
92 and power companies shall determine their liability for payment
93 of tax under this article exclusively under section two-o of this
94 article.

95 (1) If for taxable months beginning on or after June 1, 1995,
96 liability for tax under section two-o of this article is equal to or
97 greater than the sum of the power company's liability for

98 payment of tax under subdivision (3), subsection (a) of this
99 section and section two-m of this article, then the company shall
100 pay the tax due under section two-o of this article and not the tax
101 due under subdivision (3) subsection (a) of this section and
102 section two-m of this article. If tax liability under section two-o
103 is less, then the tax shall be paid under subdivision (3),
104 subsection (a) of this section and section two-m of this article
105 and the tax due under section two-o shall not be paid.

106 (2) The provisions of subdivision (3), subsection (a) of this
107 section shall expire and become null and void for taxable years
108 beginning on or after January 1, 1998.

109 (e) Notwithstanding the provisions of subdivision (1),
110 subsection (a) of this section or any other provision of this article
111 to the contrary, no person engaging or continuing within this
112 state in the service or business of street and interurban and
113 electric railways is subject to the tax imposed by section two of
114 this article.

